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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MATTHEW WADE BEASLEY; BEASLEY
LAW GROUP PC; JEFFREY J. JUDD;
CHRISTOPHER R. HUMPHRIES; J&J
CONSULTING SERVICES, INC., an Alaska
Corporation; J&J CONSULTING SERVICES,
INC., a Nevada Corporation; J AND J
PURCHASING LLC; SHANE M. JAGER;
JASON M. JONGEWARD; DENNY
SEYBERT; ROLAND TANNER; LARRY
JEFFERY; JASON A. JENNE; SETH
JOHNSON; CHRISTOPHER M. MADSEN;
RICHARD R. MADSEN; MARK A.
MURPHY; CAMERON ROHNER; and
WARREN ROSEGREEN;

Defendants; and

THE JUDD IRREVOCABLE TRUST; PAJ
CONSULTING INC; BJ HOLDINGS LLC;
STIRLING CONSULTING, L.L.C.; CJ
INVESTMENTS, LLC; JL2 INVESTMENTS,
LLC; ROCKING HORSE PROPERTIES,
LLC; TRIPLE THREAT BASKETBALL,
LLC; ACAC LLC; ANTHONY MICHAEL
ALBERTO, JR.; and MONTY CREW LLC;

Relief Defendants.

Case No.: 2:22-cv-00612-CDS-EJY

Judge: Cristina D. Silva
Magistrate Judge: Elayna J. Youchah

**MOTION TO EXTEND DISCOVERY
SCHEDULE (Second Request)**

1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (the “SEC”), pursuant to Local Rules 6-1
3 and 26-3, hereby moves to extend the discovery schedule and associated deadlines by several
4 months to allow the SEC sufficient time to complete expert and fact discovery. This is the
5 second motion to extend the schedule in this action. The SEC previously sought and obtained an
6 extension of expert and fact discovery by seven months to allow the Receiver time to complete
7 his forensic accounting, which the Receiver originally projected would be completed by January
8 2024 and the parties had hoped to rely on for purposes of settlement and resolving this action
9 without expending significant time and resources on discovery. (Dkt. No. 539.) However, in
10 light of the Receiver now projecting that he will not complete his forensic accounting until
11 March 31, 2025, the SEC has decided to complete expert and fact discovery in advance of the
12 forensic accounting and requires an extension of the current deadlines to do so.¹

13 **II. BACKGROUND**

14 On January 20, 2023, the Court entered the scheduling order in this action, setting
15 forth the deadlines for the case, including discovery cut-off, exchange of initial expert reports
16 and the exchange of rebuttal expert reports. (Dkt. No. 429.) The Court, in signing the
17 scheduling order, acknowledged that this is a highly complex case and that the standard
18 discovery deadlines set forth in Local Rule 26-1(b) would not promote the efficient and effective
19 resolution of this case. (*Id.*)

20 On June 26, 2023, the SEC filed its first motion to extend the discovery schedule. (Dkt.
21 No. 539.) The SEC explained that additional time was needed to allow the Receiver to complete
22 his forensic accounting, which given the complexities and scope of the entities and financial

23
24 ¹ On the date of this filing, the SEC emailed all the parties for whom it had email addresses at
25 approximately 9:30 a.m. PST and notified them of this filing. The SEC requested that the
26 recipients of the email please let the SEC know their position with respect the extensions
27 requested by 3:00 p.m. PST the same day. As of the time of this filing, the SEC had heard back
from counsel for Seth Johnson, Cameron Rohner, and Richard Madsen, the only defendant to
object to the SEC’s first request for an extension. None of them opposed the motion.
(Declaration of Douglas M. Miller (“Miller Decl.”), ¶ 8.)

records at issue, was estimated at that time would not be completed until at least January 2024. (*Id.* at p. 2.) The SEC further explained that allowing additional time for the forensic accounting to be completed would facilitate settlement discussions with several of the defendants and streamline out-of-court resolutions without the expense of additional fact and expert discovery. (*Id.* at p. 3.) The SEC also explained that allowing the forensic accounting to be completed would potentially avoid the SEC expert from having to duplicate the work of the Receiver in preparing an expert report. (*Id.* at pp. 2-3.) The SEC proposed extending the discovery and related deadlines by seven months. (*Id.*) To accomplish this, the SEC proposed the following schedule:

<u>Event</u>	<u>Deadline</u>
Discovery Cut-Off	Sept. 9, 2024
Exchange of Initial Expert Reports	May 9, 2024
Exchange of Rebuttal Expert Reports	June 10, 2024
Last Day to Amend Pleadings or Add Parties	June 11, 2024
Dispositive Motion Cut-Off	Oct. 9, 2024
Joint Pretrial Order (Rule 26(a)(3) disclosures shall be included in the Pretrial Order)	Nov. 8, 2024

On July 25, 2023, the Court granted the SEC's motion to extend the discovery and other case related deadlines by seven months over defendant Madsen's opposition. (Dkt. No. 552.) The Court, in exercising its discretion under *Goehring v. Brophy*, 94 F.3d 1294, 1305 (9th Cir. 1996) and other precedent, found there was good cause for the requested extension. (*Id.* at p. 2.)

After the Court granted the SEC's request for an extension, other than issuing some Rule 45 document subpoenas and sending initial interrogatories, document requests, and requests for admission to Defendants, the SEC did not engage in any further discovery because the purpose of the extension was to allow the forensic accounting to be completed, which would facilitate settlement discussions with several of the defendants and streamline out-of-court resolutions without the expense of additional fact and expert discovery. (Dkt. No. 539, p. 3.) The SEC said

it would continue to accept discovery requests but attempt to avoid unnecessary discovery expenses during the period of extension so that the parties could pursue an expeditious resolution of the case once the forensic accounting was completed. (*Id.*) For these reasons, the SEC has not completed written discovery, expert discovery, taken depositions or issued additional subpoenas.

In February 2024, the SEC retained Duane Campbell, a Senior Director at FTI Consulting, to serve as its forensic accountant and expert in this matter. (Miller Decl., ¶ 3.) However, despite earlier projections, the Receiver's forensic accounting was not completed by January 2024. The SEC conferred with the Receiver about the status of his forensic accounting and the Receiver reported that, of the 605 accounts identified to date, approximately 54% have been reviewed and analyzed, approximately 37% are in process and approximately 10% require additional documentation before they can proceed. (Declaration of Geoffrey Winkler ("Winkler Decl."), ¶¶ 8-14.) As a result, the Receiver currently projects, due to the complexities of this case, that his forensic accounting will be completed by March 31, 2025. (*Id.* at ¶ 14.)

In light of the Receiver's current projections, the SEC has decided to complete expert and fact discovery in advance of the forensic accounting and requires an extension of the current deadlines to do so. Specifically, the SEC would like to extend the discovery deadlines and related deadlines as follows:

<u>Event</u>	<u>Deadline</u>	<u>Proposed Deadline</u>
Discovery Cut-Off	Sept. 9, 2024	Dec. 6, 2024
Exchange of Initial Expert Reports	May 9, 2024	Nov. 8, 2024
Exchange of Rebuttal Expert Reports	June 10, 2024	Nov. 22, 2024
Last Day to Amend Pleadings or Add Parties	June 11, 2024	Nov. 25, 2024
Dispositive Motion Cut-Off	Oct. 9, 2024	Jan. 17, 2025
Joint Pretrial Order (Rule 26(a)(3) disclosures shall be included in the Pretrial Order)	Nov. 8, 2024	Feb. 21, 2025

1 To facilitate completing expert and fact discovery within this timeframe, the SEC has
2 asked the Receiver to start transferring the financial records he already has in his possession to
3 the SEC so that its expert can begin preparing the expert report that was delayed in anticipation
4 of the forensic accounting being completed by January 2024. The Receiver notified the SEC he
5 would begin the process of sharing the financial records with the SEC on April 24, 2024. (Miller
6 Decl., ¶ 4.) Two of the financial institutions have advised the Receiver that they will not permit
7 the Receiver to share documents with the SEC unless the SEC formally issues a subpoena to the
8 Receiver for those documents or issues a subpoena to those financial institutions. (Winkler
9 Decl., ¶ 12.) Therefore, the SEC is in the process of preparing a subpoena to the Receiver for
10 these documents. (Miller Decl., ¶ 5.)

11 **III. ARGUMENT**

12 District of Nevada Local Rule IA 6-1 provides that a motion to extend time must state the
13 reasons for the extension requested and must inform the Court of all previous extensions of the
14 subject deadline the Court granted. Local Rule 26-3 further provides that a motion to extend a
15 deadline set by a scheduling order, in addition to satisfying the requirements of Local Rule IA 6-
16 1, must be supported by a showing of good cause for the extension and must be received by the
17 Court no later than 21 days before the expiration of the subject deadline or demonstrate that the
18 failure to do so was the result of excusable neglect. Lastly, Local Rule 26-3 requires that the
19 motion to extend a discovery deadline include: (a) a statement specifying the discovery
20 completed; (b) a specific description of the discovery that remains to be completed; (c) the
21 reasons why the deadline was not satisfied or the remaining discovery was not completed within
22 the time limits set by the discovery plan; and (d) a proposed schedule for completing all
23 remaining discovery.

24 In this case, the SEC's motion for an extension of the discovery deadlines satisfies all of
25 the requirements of Local Rule IA 6-1 and Local Rule 26-3. The SEC has established good
26 cause for the requested extension. It has provided the Court with a declaration from the Receiver
27 explaining the unexpected delays he has encountered in completing his forensic analysis and that

1 despite his earlier projection of the forensic analysis being completed by January 2024, his
 2 current projection is that it will not be completed until March 31, 2025. *See Zivkovic v. S. Cal.*
 3 *Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (good cause exists “if [the schedule] cannot
 4 reasonably be met despite the diligence of the party seeking the extension”) (citing *Johnson v.*
 5 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)).

6 Although one of the deadlines covered by the SEC’s proposed extension – the deadline
 7 for expert discovery, which is currently scheduled to close on May 9, 2024 – is less than 21 days
 8 away, the Court should find that the SEC’s failure to file its motion sooner was the result
 9 excusable neglect. *See Branch Banking & Trust Co. v. DMSI, LLC*, 871 F.3d 751, 764-65 (9th
 10 Cir. 2017). This analysis is guided by factors that include (1) the danger of prejudice to the
 11 opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the
 12 reason for the delay; and (4) whether the movant acted in good faith. *See Branch Banking*, 871
 13 F.3d at 765. Here, counsel for the SEC worked diligently with the Receiver in putting together a
 14 request for a continuance of the discovery deadlines in light of the Receiver’s current projections
 15 for completing the forensic analysis. (Miller Decl. ¶ 6.) SEC counsel had the Receiver prepare a
 16 detailed declaration explaining the reasons why the forensic accounting could not be completed
 17 within his original projections and explain his new projections for when it would be complete.
 18 (*Id.*) The Receiver prepared a fact-intensive declaration with the assistances of his counsel and
 19 put together a chart detailing all of the subpoenas the Receiver had issued and explaining why
 20 the forensic accounting has taken longer than expected. (Winkler Decl. ¶¶ 5-14.) Accordingly,
 21 because the delay was not the result of dilatory behavior on the part of the SEC or the Receiver
 22 and because it has not prejudiced the defendants, the Court should find that the SEC’s failure to
 23 file its motion before the 21-day deadline with respect to expert discovery is the result of
 24 excusable neglect. *See Fernandez-Gonzalez v. Valdes-Garcia*, Case No. 2:20-cv-01775-RFB-
 25 NJK, 2023 WL 8622360, *3 (D. Nev. Dec. 13, 2023) (applying excusable neglect factors and
 26 being “most mindful of the potential for prejudice” in making a finding of excusable neglect).
 27 Moreover, extending expert discovery by approximately six months will not have a substantial

1 impact on the proceedings and the SEC is making its request in good faith and not for purposes
2 of delay or tactical advantage. (Miller Decl. ¶ 7.)

3 **IV. CONCLUSION**

4 Accordingly, the SEC respectfully requests that its motion for a six-month extension of
5 the discovery and related deadlines be granted.

6 Dated: April 26, 2024.

7
8 Respectfully submitted,

9
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18 **ORDER**

19 Pending before the Court is the Motion to Extend
20 Discovery. ECF No. 871. No response to the Motion
21 was timely filed.

22 Accordingly, IT IS HEREBY ORDERED that under
23 LR 7-2(d) the Motion to Extend Discovery (ECF No.
24 871) is GRANTED.

25 
26 U.S. MAGISTRATE JUDGE

27 Dated: May 13, 2024